

1 **Exhibit E**
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7 VISTA ENERGY MARKETING, LP,
8 Plaintiff,
9 v.
10 PACIFIC GAS & ELECTRIC COMPANY,
et al.,
11 Defendants.

Case No. 16-cv-04019-HSG

**ORDER DENYING DEFENDANTS'
MOTION TO DISMISS AND SETTING
CASE MANAGEMENT CONFERENCE**

Re: Dkt. No. 26

12
13 Defendants Pacific Gas & Electric Company (PG&E), Albert Torres, Bill Chen, and
14 Tanisha Robinson move to dismiss the complaint filed by Plaintiff Vista Energy Marketing. As
15 Plaintiff acknowledges several times in its opposition to Defendants' motion, Plaintiff's
16 allegations and causes of action in this case are materially identical to those of another case filed
17 by Plaintiff's counsel in this District, *North Star Gas Co. v. Pacific Gas & Electric Co.*, No. 4:15-
18 cv-02575-HSG (N.D. Cal.) ("North Star").

19 For this reason, the Court's disposition in *North Star* decides this motion to dismiss, which
20 the Court **DENIES**.

21 **I. BACKGROUND**

22 **A. Factual Allegations**

23 The relevant factual allegations of this case are materially identical¹ to those in *North Star*,
24 which the Court has already summarized. See *North Star*, Dkt. No. 53 at 3-5.

25
26 ¹ One allegation present in the *North Star* case that is absent here is that of a "Customer Call
27 Scheme," wherein North Star alleged that PG&E "improperly and inaccurately tell[s] North Star
28 customers that PG&E's natural-gas prices are less expensive than North Star's pricing." *North
Star*, Dkt. No. 56 ¶ 86. Plaintiff Vista makes no such allegation in its complaint. This distinction is
not relevant to the Court's analysis.

1 B. Procedural History

2 Plaintiff filed this action on July 15, 2016, asserting claims under federal and state law.
3 Against Torres, Chen, and Robinson (“Individual Defendants”), Plaintiff asserts substantive and
4 conspiracy claims under the civil Racketeer Influenced and Corrupt Organizations Act (RICO), 18
5 U.S.C. § 1961, *et seq.* Compl. ¶¶ 90-112. Against PG&E, Plaintiff asserts eight claims: (1)
6 *respondeat superior* liability for the RICO counts, Compl. ¶¶ 113-19; (2) attempted
7 monopolization in violation of the Sherman Act, 15 U.S.C. § 2, Compl. ¶¶ 120-38; (3) breach of
8 fiduciary duty, Compl. ¶¶ 139-49; (4) intentional misrepresentation, *id.* ¶¶ 150-55; (5) negligent
9 misrepresentation, *id.* ¶¶ 156-61; (6) intentional interference with contract, *id.* ¶¶ 162-70; (7)
10 intentional interference with prospective business advantage, *id.* ¶¶ 171-79; and (8) violation of
11 California Business & Professions Code § 17200 *et seq.*, Compl. ¶¶ 180-84.

12 On September 22, 2016, Defendants filed their motion to dismiss, Dkt. No. 26, which the
13 Court took under submission on December 6, 2016, Dkt. No. 34.

14 II. DISCUSSION

15 Defendants move to dismiss all nine counts of Plaintiff’s complaint. Because the Court has
16 already set forth the relevant standards and its reasoning for identical causes of action in *North*
17 *Star*, it refers the parties to its prior orders:

18 The Court denies Defendants’ motion with regard to Plaintiff’s RICO claims. *See North*
19 *Star*, Dkt. No. 53 at 30-38.

20 The Court denies Defendants’ motion with regard to Plaintiff’s *respondeat superior* claim.
21 *See North Star*, Dkt. No. 90 at 3-5.

22 The Court denies Defendants’ motion with regard to Plaintiff’s Sherman Act claim. *See*
23 *North Star*, Dkt. No. 90 at 5-6.

24 The Court denies Defendants’ motion with regard to Plaintiff’s breach of fiduciary duty
25 claim. *See North Star*, Dkt. No. 53 at 43.

26 The Court denies Defendants’ motion with regard to Plaintiff’s intentional
27 misrepresentation claim. *See North Star*, Dkt. No. 53 at 43-44.

28 The Court denies Defendants’ motion with regard to Plaintiff’s negligent misrepresentation

1 claim. *See North Star*, Dkt. No. 53 at 44-45.

2 The Court denies Defendants' motion with regard to Plaintiff's intentional interference
3 with contract claim. *See North Star*, Dkt. No. 53 at 45.

4 The Court denies Defendants' motion with regard to Plaintiff's intentional interference
5 with prospective business advantage claim. *See North Star*, Dkt. No. 53 at 45-46.

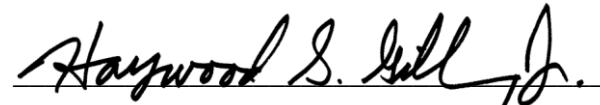
6 The Court denies Defendants' motion with regard to Plaintiff's claim pursuant to section
7 17200 of the California Business and Professions Code. *See North Star*, Dkt. No. 53 at 46-47.

8 **III. CONCLUSION**

9 For the foregoing reasons, the Court hereby **DENIES** Defendants' motion to dismiss
10 Plaintiff's complaint. The parties are **ORDERED** to appear at a case management conference on
11 October 3, 2017 at 2:00 p.m. The parties shall submit a joint case management statement by
12 September 26, 2017.

13 **IT IS SO ORDERED.**

14 Dated: September 8, 2017

15 
16 HAYWOOD S. GILLIAM, JR.
17 United States District Judge